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No. 549

In the Supreme Court of the United States

OCTOBER TERM, 1952

HARRY RENTON BRIDGES, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

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OPINION BELOW

The opinion of the court below (R. 22) is reported at 199 F. 2d 845.

JURISDICTION

The judgment of the Court of Appeals was entered on September 6, 1952 (R. 26), and a petition for rehearing was denied on November 18, 1952 (R. 27). On December 9, 1952, Mr. Justice Douglas entered an order extending the time for filing a petition for a writ of certiorari to and in-

cluding January 16, 1953. The petition was filed on January 14, 1953. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, assuming the lawfulness of a conviction of the petitioner for having made a false statement in his naturalization proceeding, the district court in which he was convicted had power, immediately after his conviction, to order his denaturalization, under 8 U.S.C. 738(e), as a person who had been convicted of "knowingly procuring naturalization in violation of law."

STATUTES INVOLVED

Section 338(e) of the Nationality Act of 1940, 54 Stat. 1158, 8 U.S.C. (1946 ed.) 738(e) provides:

> When a person shall be convicted under this Act of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is hereby conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.

STATEMENT

At the time of the filing of the indictment against the petitioner Bridges, in the case now before this Court as No. 548,[1] a denaturaliza-

[1] The facts stated in that petition are incorporated here by reference.

tion proceeding was also instituted, pursuant to Section 338(a) of the Nationality Act of 1940, 8 U.S.C. 738(a). Action on this, however, was stayed pending the judgment of the trial court in the criminal proceeding (86 F. Supp. 931). After judgment against petitioner was entered in the criminal proceeding, government counsel filed a motion to revoke, set aside, and declare void the final order admitting petitioner to citizenship (R. 4). On June 16, 1950, a memorandum opinion and order were handed down (R. 3-7) relative to the denaturalization proceeding, and on June 20, 1950, a decree revoking, setting aside, and declaring void the final order admitting petitioner to citizenship (R. 8-12) was signed. The Court of Appeals affirmed the validity of the decree (R. 22).

ARGUMENT

1. The Government's memorandum on the petition for certiorari in No. 548 sufficiently deals with the issues as to the validity of the criminal conviction on the basis of which the order of denaturalization was issued. If the writ should be granted in that case, it is submitted that this petition should be held without action until the disposition of that case on the merits and then disposed of appropriately.

2. Petitioner also contends that he was not convicted "of knowingly procuring naturalization in violation of law," and therefore that the condition

for revoking citizenship set forth in Section 338(e) of the Nationality Act of 1940, *supra*, p. 2, has not been satisfied. He argues that Section 338(e) refers only to a conviction of the specific charge of procuring naturalization in violation of law as set forth in Section 346(a)(2) of the Nationality Act, and not to a violation of any other of the penal provisions in connection with the procurement of citizenship such as Section 346(a)(1), for violation of which petitioner was convicted.[2]

This interpretation of Section 338(e) does violence to its obvious purpose. If Congress had intended Section 338(e) to apply only to a violation of one of the many penal provisions under Section 346, it would undoubtedly have so indicated. The comments on the proposed draft of this Act submitted to the House Committee (II Hearings before the House Committee on Immigration and Naturalization on H. R. 6127, superseded by H. R.

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[2] The pertinent parts of Section 346(a) (8 U. S. C. (1946 ed.) 746(a)) are:

It is hereby made a felony for any alien or other person, whether an applicant for naturalization or citizenship; or otherwise, and whether an employee of the Government of the United States or not—

(1) Knowingly to make a false statement under oath, either orally or in writing, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization or citizenship.

(2) Knowingly to procure or attempt to procure—

a. The naturalization of any such person, contrary to the provisions of any law; or

b. Documentary or other evidence of naturalization or of citizenship of any such person, contrary to the provisions of any law.

9980, 76th Congress, 1st session, at p. 471) state as to Section 338:

> Proposed subsection (e) is a continuance of provisions now present in the naturalization statutes giving the Federal courts authority, as a part of criminal proceedings, to revoke the naturalization fraudulently procured and cancel the certificate of naturalization. * * *

This reveals the overriding policy of revoking the citizenship of anyone convicted under any of the penal provisions under circumstances which establish that naturalization was obtained either illegally or by fraud. It is specious to contend that a conviction of petitioner for false swearing in his naturalization hearing does not fully establish that he "knowingly procured naturalization in violation of law."

Section 338(e), moreover, is *in pari materia* with Section 338(a), which provides for a civil proceeding for the cancellation of naturalization on the ground of fraud or on the ground that such naturalization was illegally procured.[3] Section 338(a) covers any naturalization which was unauthorized

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[3] Section 338(a) (8 U. S. C. (1946 ed.) 738(a)) provides:

"It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

by law (*Maney* v. *United States*, 278 U.S. 17) or which was procured through fraud or other illegal contrivance (*Johannessen* v. *United States*, 225 U.S. 227). See also *Knauer* v. *United States*, 328 U.S. 654, 672-673. It is apparent that Section 338(e) was intended to make unnecessary the civil suit provided for in Section 338(a) whenever it is established by a conviction in a criminal proceeding that the naturalization of the defendant was obtained by any fraudulent contrivance in violation of law. The same bases for denaturalization which obtain under Section 338(a) also obtain under Section 338(e). The difference between the two sections is procedural, not substantive.

Since the burden of proof is greater in a criminal proceeding in which the defendant has the benefit of a trial by jury, it is unreasonable to suppose that Congress intended to require a retrial of the issues in a civil proceeding when fraud in obtaining naturalization by the giving of false testimony in the naturalization proceeding has been proved beyond a reasonable doubt by a conviction in the criminal action. It is clear that an alien who knowingly testified falsely, with an obvious view to facilitating his naturalization, would, under Section 338(e), knowingly have procured such naturalization in violation of the Nationality Act.[4]

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[4] The identical issue here involved was adverted to in *Klapprott* v. *United States*, 335 U. S. 601 (opinion of Mr. Justice Black) where it was said, at p. 610:

> 8 U. S. C. § 746 makes it a felony for applicants for naturalization or others to violate federal laws relating to

3. We believe also that petitioner's conviction on the conspiracy count of the indictment against him furnishes a basis for the revocation action. While this count charges a conspiracy to defraud the United States under 18 U. S. C. [1946 ed.] 88, which obviously is not part of the Nationality Act of 1940, nevertheless, the illegality of the conspiracy is predicated on a contravention of the statutory mandate of the Nationality Act. That Act prescribes the steps for obtaining naturalization in explicit terms. It was to subvert those explicit directions that the illegal combination in which petitioner participated was formed. It is sufficient to come within the provisions of Section 338(e) that the conviction establishes a crime the elements of which violate the express mandate of the Nationality Act for obtaining citizenship.

CONCLUSION

For the foregoing reasons, it is respectfuly submitted that the petition for a writ of certiorari be denied, unless the writ is granted in No. 548, in

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naturalization. Had petitioner been found guilty of making the false oath here charged, he could have been convicted of and punished for a felony under this section. But he could have been convicted only after indictment and a jury trial at which he would have been present and represented by counsel. A conviction would have required a proof of guilt beyond a reasonable doubt, on testimony of witnesses given in the presence of the accused who would have had an opportunity to cross-examine the witnesses against him. In the event of such a conviction under required procedural safeguards, § 738 (e) authorizes courts to revoke citizenship and cancel naturalization certificates.

which case this petition should be held without action until final disposition of that case.

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FEBRUARY, 1953.